

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA**
Big Stone Gap Division

WILLIAM THORPE, *et al.*,

Plaintiffs,

v.

VIRGINIA DEPARTMENT OF
CORRECTIONS, *et al.*,

Defendants.

Case No. 2:20-cv-00007-JPJ-PMS

**DEFENDANTS' MOTION FOR LEAVE TO FILE REPLY BRIEF
IN SUPPORT OF RULE 72(B) OBJECTIONS TO
MAGISTRATE JUDGE'S REPORT & RECOMMENDATION**

Pursuant to Local Civil Rule 11(c)(2), Defendants respectfully seek leave to file a reply brief in support of their objections to the Magistrate Judge's Report and Recommendation (Dkt. 70). In support of this motion, Defendants state as follows:

1. This putative class action, brought by twelve inmates against the Virginia Department of Corrections ("VDOC") and various VDOC officials, seeks to invalidate VDOC's Segregation Reduction Step-Down Program—a longstanding program that has successfully transitioned hundreds of security level "S" offenders back into the general population when their conduct has demonstrated it was safe to do so. Plaintiffs assert a range of claims: violations of various constitutional rights in connection with their confinement in segregated housing; violation of a settlement agreement from the 1980s; and discrimination on the basis of their alleged disabilities, in violation of the Americans with Disabilities Act and the Rehabilitation Act.

2. Defendants filed two motions to dismiss Plaintiffs' claims, which the parties briefed. On September 4, 2020, Magistrate Judge Sargent issued an 89-page report and recommendation ("R&R") recommending, in large part, that the Court deny Defendants' motions to dismiss. Dkt. 70.

3. On September 18, 2020, Defendants filed timely objections under Federal Rule of Civil Procedure 72(b). Dkt. 72, 73. On October 2, 2020, Plaintiffs filed a 31-page opposition brief. Dkt. 75.

4. Rule 72 does not expressly contemplate the filing of reply briefs in support of objections to magistrate judges' reports and recommendations. *See* Fed. R. Civ. P. 72. Nevertheless, this Court has previously considered reply briefs when they have been filed. *See, e.g., Baron v. Astrue*, No. 6:09-cv-35, 2010 WL 3909926, at *1 (W.D. Va. Sept. 30, 2010) (considering a reply brief filed in support of objections to report and recommendation regarding summary-judgment motions); *Ambrose v. Southworth*, 953 F. Supp. 728, 731 (W.D. Va. 1997) (finding "not improper" a reply brief filed in support of objections to report and recommendation regarding motion to amend).

5. Defendants submit that a reply brief addressing the arguments and authorities raised by Plaintiffs would be helpful to the Court's consideration of the dispositive motions filed in this case. *Ambrose*, 953 F. Supp. at 731 ("[A] reply brief is warranted to the extent that it addresses [Plaintiffs'] response.").

6. Defendants have prepared a proposed 15-page reply brief, attached hereto as Exhibit 1, within the 7-day period normally permitted for rebuttal briefs under Local Civil Rule 11(a).

7. For these reasons, good cause exists for granting the requested relief.

WHEREFORE, Defendants respectfully request that the Court grant their motion for leave to file a reply brief, and order that their proposed reply brief, attached hereto as Exhibit 1, be deemed filed.

October 9, 2020

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of October, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing to all CM/ECF participants.

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